IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 2109 of 2004(A)

CMA.14/2002 of SUB COURT,THODUPUZHA
I.A.556/01 IN OS.154/1995 of MUNSIFF'S COURT, DEVIKULAM

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PETITIONERS:

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1. LISSY, AGED 60 YEARS,
   WIFE OF LATE JOSEPH, KUNNALAKKATTU HOUSE,
   CHATTUPARA, ADIMALY KARA, MANNAMKANDOM VILLAGE,
   DEVIKULAM TALUK.

2. SOLY, AGED 32 YEARS, S/O. JOSEPH,
   KUNNALAKKATTU HOUSE, CHATTUPARA,
   ADIMALY KARA, MANNAMKANDOM VILLAGE,
   DEVIKULAM TALUK.

BY ADV. SRI.V.L.SHENOY

RESPONDENTS:

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1. SANKARANKUTTY, S/O. KUNJAN,
   CHELATTU HOUSE, CHATTUPARA KARA,
   MANNAMKANDOM VILLAGE, DEVIKULAM TALUK.

2. KARTHIYANI, W/O. LATE KANDA @ KUNJAN,
   CHELATTU HOUSE, MACHIPLAVU P.O.,
   CHATTUPARA KARA, MANNAMKAMDOM VILLAGE.

3. RAJAPPAN, S/O. LATE KANDA @ KUNJAN,
   CHELATTU HOUSE, MACHIPLAVU P.O.

4. RAMANAN, S/O. LATE KANDA @ KUNJAN,
   CHELATTU HOUSE, MACHIPLAVU P.O.

5. CHANDRASEKHARAN, S/O. LATRE KANDA @
   KUNJAN, CHELATTU HOUSE, MACHIPLAVU P.O.

6. SHOBHANAN, S/O. LATE KANDA @ KUNJAN,
CHELATTU HOUSE, MACHIPLAVU P.O.

7. VILASINI, D/O. LATE KANDA @ KUNJAN,
THANKAPARAMBIL HOUSE, PARATHODE.

8. LEELA, D/O. KANDA @ KUNJAN,
CHELATTU HOUSE, MACHIPLAVU P.O.

9. AMMINI, D/O. LATE KANDA @ KUNJAN,
CHELATTU HOUSE, MACHIPLAVU P.O.

10. BHAVANI, D/O. LATE KANDA @ KUNJAN,
CHELATTU HOUSE, MACHIPLAVU P.O.

11. BABY SWAPNA, D/O. LATE KANDA @ KUNJAN,
CHELATTU HOUSE, MACHIPLAVU P.O.

12. JUSTINE, S/O. JOSEPH,
KUNNALAKKATTU HOUSE, CHATTUPARA,
ADIMALY KARA, MANNAMKANDOM VILLAGE.

13. ESTHER, D/O JOSEPH, KUNNALAKKATTU
HOUSE, CHATTUPARA, ADIMALY KARA,
MANNAMKANDOM VILLAGE.

14. SESSY, D/O. JOSEPH, KUNNALAKATTU HOUSE,
CHATTUPARA, ADIMALY KARA, MANNAMKANDOM VILLAGE.

15. JOHNSON, S/O. JOSEPH,
KUNNALAKATTU HOUSE, CHATTUPARA, ADIMALY KARA,
MANNAMKANDOM VILLAGE.

R12 TO R15 BY ADV. SRI.L.YESHWANTH
SRI.V.K.SUNIL
R1 BY ADV.SRI.MANU S.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.2109/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN I.A.556/01 IN O.S.154/95 OF MUNSIFF'S COURT, DEVIKULAM DT.13.11.01.

EXT.P2 – TRUE COPY OF JUDGMENT IN CMA.14/02 DT.30.9.03 OF SUB COURT, THODUPUZHA.

EXT.P3 – TRUE COPY OF CERTIFICATE ISSUED BY THE AUTHORITY DT.23.7.98

EXT.P4 – TRUE COPY OF DO. DT.6.11.2000.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.2109 OF 2004

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DATED THIS THE 11th JULY, 2007

J U D G M E N T

This Writ Petition is filed by plaintiffs 1 and 5 impugning Ext.P1 order of the learned Munsiff dismissing an application for restoration and Ext.P2 judgment of the Subordinate Judge confirming Ext.P1. To begin with, there were only two defendants in the suit and the 1st respondent was the 1st defendant. Respondents 2 to 11 are the legal representatives of the original 2nd defendant. There is no conflict of interest between defendants 1 and 2 before the courts below and in fact they were sailing together. Since there is appearance for the 1st respondent, I am of the view that the 1st respondent can take care of the interest of the other respondents also in the matter of this Writ Petition. The Writ Petition is therefore not defective.

2. The suit was for recovery of possession of plaint B-schedule property having an extent of 27 cents on the strength of plaintiffs' title. The total extent of A-schedule property is 75 cents and B-schedule is its part. The suit was dismissed for default due to non-prosecution by the petitioners-plaintiffs after the suit had been relisted for trial after being special listed on one or two previous occasions. It is to be stated at the very outset that Exts.P1 and P2 are reasoned

orders and it cannot be said that the views taken by the learned Munsiff and the learned Sub Judge are unreasonable or vitiated to the extent of being branded as perverse. Under Ext.P1 the application for restoration was dismissed by the learned Munsiff with costs and under Ext.P2, Ext.P1 was confirmed. Ordinarily I would not have interfered with orders in the nature of Exts.P1 and P2 since both of them are supported by sound reasoning. However, considering that the plaintiffs sued for recovery of possession on the strength of title and though they themselves are to blame, their claim for recovery has not been adjudicated on its merits, I am of the view that their application can be allowed. It is the policy of law that as far as possible, all causes must be adjudicated on their merits and should not be thrown out at the threshold.

Under these circumstances, I am inclined to interfere with Exts.P1 and P2 and allow I.A.No.556 of 2001, but only on very stringent terms. Accordingly setting aside Exts.P1 and P2, I allow I.A.No.556 of 2001, subject to the petitioners promptly complying with the following conditions:-

The petitioners shall pay a sum of Rs.7500/- by way of costs to the respondents either directly or through their counsel in this Court

or in the courts below, within one month from today. Similarly, the petitioners shall pay a sum of Rs.2500/- by way of additional costs to the High Court Legal Services Committee within the same time-frame. If both the above payments are made within the stipulated time, the I.A. will stand allowed, failing which the I.A. will stand dismissed and Ext.P1 order and Ext.P2 judgment will stand confirmed.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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